

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96813

December 9, 2011

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Request Approval to Initiate Rule-Making Proceedings to Amend Title 13, by
Adopting a New Section 13-256-73.13, "Ahu o Laka Safety Zone" Prohibiting
The Possession of Alcohol, Disorderly Conduct and Prohibiting Persons Under
The Influence of Alcohol, Narcotics or Drugs from Remaining in or Entering
The Safety Zone on Three-day Weekends Involving a State Holiday

PURPOSE: The proposed new section identifies a safety zone around Ahu o Laka (Kaneohe Sandbar) subject to restrictions on three-day weekends involving a State Holiday. The safety zone prohibits possession of alcohol, prohibits disorderly conduct, and prohibits a person under the influence of alcohol, narcotics, or drugs from remaining in or entering the safety zone.

STATUTE: Chapter 200, Hawaii Revised Statutes

REMARKS:

Ahu o Laka, recognized also as the Kaneohe Bay sandbar, is a well-known site of cultural and social significance within the waters of Kaneohe Bay, Oahu. Roughly translated as "Altar of Laka," some believe that this area was a place of worship named after Laka, the goddess of hula, and was once used as a hula heiau. Others claim that Ahu o Laka is the burial site of Chief Laka, the Oahu chief who died on the sandbar, although whether Chief Laka was actually buried there has not been verified. Despite these differing interpretations, many agree that it is a place deserving of respect, and many individuals have enjoyed the unique surroundings and recreational opportunities provided by this area.

In recent years, however, significant concerns have grown regarding the safety and health of visitors to Ahu o Laka, particularly during holidays and weekends when large crowds consistently congregate in the area. During such times, drug and alcohol use, combined with overcrowding in the limited sandbar area, have led to several instances of injury and even death.

Concern over the use of Ahu o Laka began in 2005, when, according to media accounts, a Labor Day concert of over 400 people with approximately 60-70 boats occupied the area, and led to a riot of approximately 40 to 45 people, resulting in the near-drowning of one woman, and the injury of her brother during his attempts to rescue her. During the riot, people were pushing, shoving, throwing bottles, and yelling. Division of Conservation and Resource Enforcement

(DOCARE) officers spent an hour and a half breaking tip fights and dispersing people.¹ Two free concerts were held at Ahu o Laka that year, drawing hundreds of visitors to the area. Both concerts ended in fights.²

In 2006, Senator Clayton Hee, citing the escalation of alcohol-related violence at Ahu o Laka, introduced Senate Bill No. 2004, which would have designated Ahu o Laka as a state monument, and led to rules to ban alcohol at the sandbar.³ Residents of Kaneohe and Kahuluu supported this measure, and continued to voice concerns to their neighborhood boards over the pollution, violence, and desecration occurring in this culturally significant site many felt that Ahu o Laka was no longer a safe place for families to enjoy.⁴ Although passed by the legislature, Senate Bill No. 2004 was subsequently vetoed by former Governor Linda Lingle.⁵

On Labor Day 2007, media reported that a confrontation involving dozens of people ended in an alleged stabbing, with two men taken separately to Castle Medical Center and one treated by paramedics at Heeia Kea pier.⁶ Due to this incident, the Department of Land and Natural Resources partnered with the U.S. Coast Guard to provide boater education and conduct equipment checks for the following Memorial Day, temporarily curbing the disorderly behavior observed at Ahu o Laka.⁷

However, on Memorial Day 2011, drinking and drug use at Ahu o Laka was again implicated in the death of a young man. During that day, over 200 boats and 500 people were reported to have congregated at Ahu o Laka, crowding the Heeia Kea Small Boat Harbor as people loaded and unloaded their boats. Although seven DOCARE officers were in place to monitor crowd activities that day, a later altercation at the boat harbor between the young man and another individual resulted in the young man's death, due to blunt force trauma and bleeding in his brain. A Honolulu Star-Advertiser article stated that the medical examiner eventually found alcohol and cocaine in the decedent's system.⁸ This very recent incident, combined with the long history of drug- and crowd- related violence at Ahu o Laka, indicates a strong and urgent necessity to better address the drinking and overcrowding that is otherwise anticipated at Ahu o Laka in the upcoming Fourth of July and Labor Day holidays.

Currently, there are no apparent Department regulations relating to disorderly conduct, or the consumption, use, or possession of alcohol or other intoxicating substances, in relation to Ahu o Laka. While set aside as a wildlife reservation by GEO 532 (1932), Ahu o Laka does not appear to be designated as a wildlife sanctuary, under Division of Forestry and Wildlife

¹ <http://archives.starbulletin.com/2005/11/04/news/story04.html>

² <http://the.honoluluadvertiser.com/article/2005/Nov/03/In/FP511030316.html/>

³ <http://the.honoluluadvertiser.com/article/2007/Sep/10/In/hawaii709100329.html/>

⁴ <http://www1.honolulu.gov/refs/nco/nb30/07/30sepm.htm>;

<http://www1.honolulu.gov/refs/nco/nb29/06/29marmin.htm>

⁵ <http://the.honoluluadvertiser.com/article/2007/Sep/10/In/hawaii709100329.html/>

⁶ <http://archives.starbulletin.com/2007/09/05/news/story07.html>

⁷ <http://archives.starbulletin.com/2008/05/24/news/story07.html>

⁸ http://www.staradvertiser.com/news/breaking/No_charges_will_be_filed_in_Memorial_Day_fight_death.html

regulations, which would otherwise prohibit such activities.⁹ In addition, the set-aside in GEO 532 also precludes Ahu o Laka from consideration as unencumbered public lands, which otherwise would prohibit possession of drugs and alcohol.¹⁰ Ahu o Laka is included in Division of Boating and Ocean Recreation (DOBOR) regulations establishing subzones within Kaneohe Bay; however, these existing regulations also do not cover the full range of activities of concern in this area.¹¹ Given the apparently increasing levels of recreational use of Ahu o Laka, this submittal seeks to address these activities in the interest of public health and safety on a permanent basis.

At its June 23, 2011 meeting, the Board adopted section 13-256-73.13, HAR, as an emergency rule which was then signed and filed with the Office of the Lieutenant Governor on the same date due to an imminent peril to the public health, safety, or morals as described above. The emergency rule ended one hundred twenty days without renewal."¹²

AUTHORITY

The Board of Land and Natural Resources is tasked with the "primary responsibility for administering the ocean recreation and coastal areas programs and performing the functions [formerly] performed by the department of transportation and the department of public safety in the areas of boating safety, conservation, search and rescue, and security of small boat harbor environs."¹³ To carry out these duties, the Chairperson is authorized to promulgate rules "to continue the ocean recreational and coastal areas programs and govern the ocean waters and navigable streams of the state . . . to protect and foster public peace and tranquility and to promote public safety, health, and welfare"; such rules may involve "regulating the anchoring and mooring of vessels . . . outside of any harbor or facility," as well as "safety measures . . . in or on the ocean waters and navigable streams of the state," and "any other matter relating to the safety, health, and welfare of the general public."¹⁴ All such rules must "be adopted in accordance with chapter 91 and shall have the force and effect of law."¹⁵ Chapter 91, HRS, provides the general procedures for administrative agencies to adopt rules within their statutory authority. In most situations, "prior to the adoption of any rule authorized by law," an agency must "give at least thirty days' notice for a public hearing," and "afford all interested persons opportunity to submit data, views, or arguments," all of which must be "fully considered" prior to the agency's decision on adopting the rule.¹⁶

⁹ See Governor's Executive Order No. 532 (1932); cf. HAR CH. 13-126

¹⁰ See HAR § 13-221-2 (defining "unencumbered public lands" as public lands "which have not been set aside for any purpose, by statute, executive order or otherwise, to a governmental agency" (emphasis added)).

¹¹ See HAR § 13-256-73; cf. HAR §§ 13-244-10, 13-244-11, 251-59 (generally prohibiting only the operation of vessels while under the influence of intoxicating liquors or other substances).

¹² HRS § 91-3(b) (emphasis added).

¹³ HRS § 200-2.

¹⁴ HRS § 200-4(a).

¹⁵ HRS § 200-4(b).

¹⁶ HRS § 91-3(a).

PURPOSE

Given the Board's rulemaking authority under HRS § 200-4, DOBOR recommends the following measures, reflected in the Ramseyer-format (attached), be implemented for all three-day weekends involving a State holiday:

1. A prohibition on the possession or consumption of alcohol and other intoxicating substances within the most frequently crowded sections of Ahu o Laka and the immediate surrounding area;
2. A prohibition on entering or remaining in such area while intoxicated or under the influence of alcohol, narcotics, or drugs; and
3. A prohibition of disorderly conduct, as defined in HRS § 711-1101, within such area.

RECOMMENDATIONS:

1. Grant the Division of Boating and Ocean Recreation approval to initiate rule-making proceedings regarding amendments to Title 13, by adopting a new section 13-256-73.13, "Ahu o Laka Safety Zone".

Respectfully submitted,



Edward R. Underwood
Administrator

Attachment

Approved for Submittal:



William J. Aila, Jr.
Chairperson

DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF BOATING AND OCEAN RECREATION

Amendments to Title 13, Subtitle 11
Ocean Waters, Navigable Streams and Beaches, Part 3
Hawaii Administrative Rules

SUMMARY

1. Section 13-256-73.13 is added

1. Chapter 13-256, Hawaii Administrative Rules, is amended by adding a new section 13-256-73.13 to read as follows:

"§13-256-73.13 Ahu o Laka safety zone. (a) The Department finds that the adoption of this section is necessary to prevent an imminent peril to public health, safety, or morals, due to increasing alcohol-related activities within the environs of Ahu o Laka on weekends and holidays resulting in mishap.

(b) Zone H-2 Ahu o Laka safety zone means the area described in this section and encompassed by the boundaries shown on Exhibit "X-2," dated June 8, 2011, and located at the end of this subchapter. The boundaries of Zone H-2 are as follows:

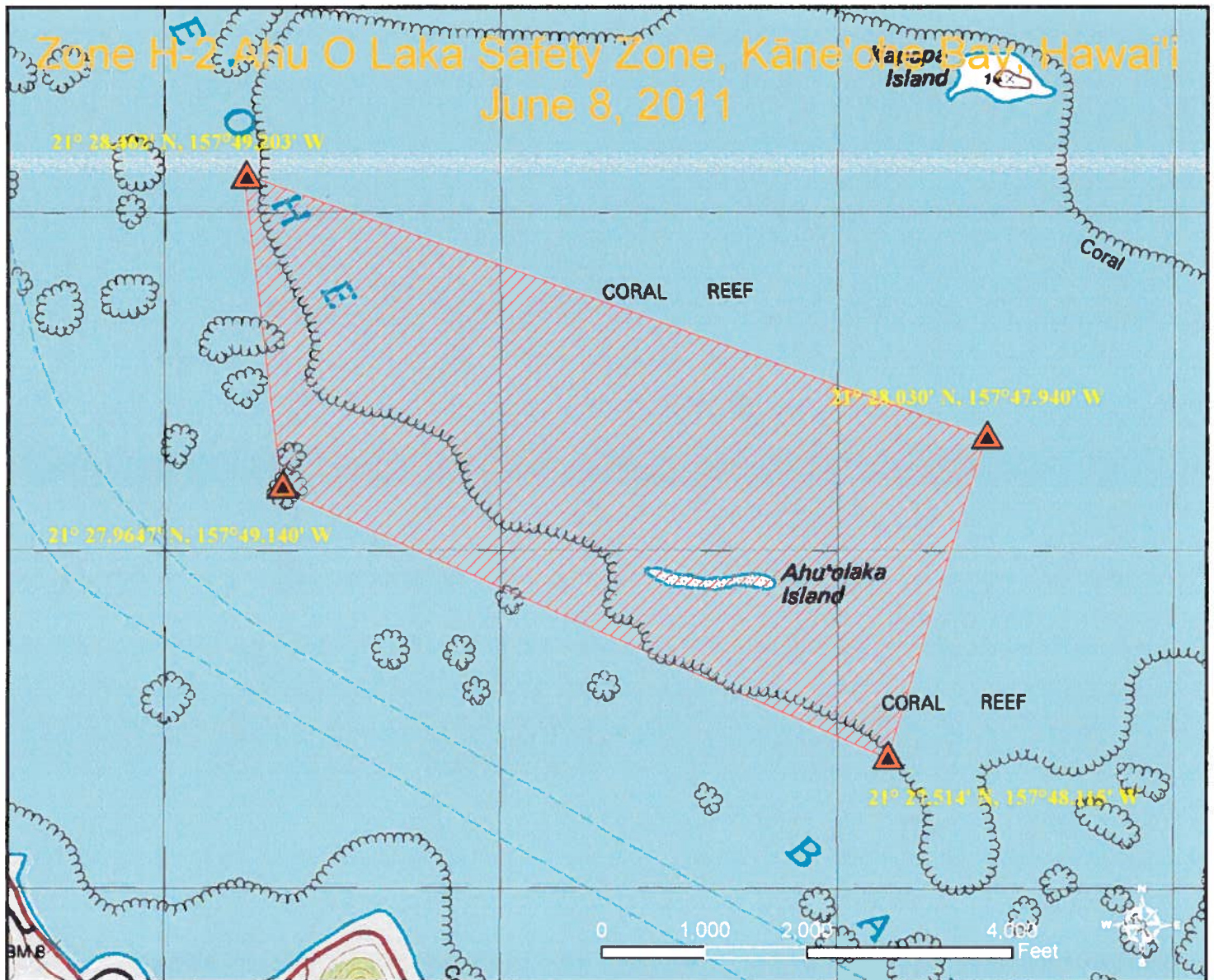
Starting at a point in the water at 21° 28.462' N 157° 49.203' W, a straight line drawn to a point at 21° 27.9647' N 157° 49.140' W, then to 21° 27.514' N 157° 48.115' W, then to 21° 28.030' N 157° 47.940' W, then back to the starting point. Zone H-2 is subject to the following restrictions from 12:00 a.m. to 11:59 p.m. on any three-day weekend involving a State holiday:

- (1) No person shall consume, use, or possess alcohol within Zone H-2;
- (2) No person shall enter or remain in Zone H-2 when manifestly under the influence of alcohol, narcotics, or drugs;
- (3) No person shall engage in disorderly conduct, as defined in section 711-1101, Hawaii Revised Statutes, within Zone H-2.

(c) In addition to any other penalty authorized by law, a violation of subsection (b) shall be subject to penalties as provided in sections 200-14 and 200-14.5, Hawaii Revised Statutes.

(d) If any provision of this section, or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of the section, which can be given effect without the invalid provision or application. To this end, all provisions of this section are declared to be severable." [Eff] (Auth: HRS §200-4) (Imp: HRS §§200-2, 200-3, 200-4, 200-14, 200-14.5)

Ocean Recreation Management Areas
Exhibit "X-2"
Zone H-2 Ahu O Laka safety zone, Kāne'ohe Bay, Hawai'i
June 8, 2011



Material, except source notes, to be repealed is bracketed and stricken. New material is underscored.

Additions to update source notes to reflect these amendments are not underscored.

These amendments to Title 13, Section 13-256-73.13, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____ by the Board of Land and Natural Resources, and filed with the Office of the Lieutenant Governor.

WILLIAM J. AILA, JR.,
Chairperson
Board of Land and Natural Resources

APPROVED FOR PUBLIC HEARING:

Deputy Attorney General